

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID K. LAMB,

Plaintiff,

v.

CORIZON, et al.,

Defendants.

Case No. 2:18-cv-61

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The only claim remaining is Plaintiff's Eighth Amendment claim against Defendants Crompton and Lamb. Defendant Crompton moved for summary judgment. Plaintiff moved for default judgment, emergency injunctive relief, and to amend his Complaint. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court grant Defendant Crompton's motion, dismiss Defendant Lamb, and deny Plaintiff's motions. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

First, Plaintiff argues that "[t]he Magistrate failed to apply Rule 8 to the Defendant's failures" (Obj., ECF No. 76 at PageID.791). Plaintiff's objection is misplaced. Federal Rule of

Civil Procedure 8 governs responses to pleadings, not responses to motions for summary judgment. Thus, this objection is denied.

Second, Plaintiff references two inmate affidavits and argues that the Magistrate Judge erred by not addressing “these claims raised in the complaint” (*id.* at PageID.793). A magistrate judge is not required to refer within a report and recommendation to all evidence reviewed. The objection is therefore denied.

Third, Plaintiff argues that because the Magistrate Judge “did not point to any medical evidence that lead [sic] to a medical spinal cord diagnoses,” the Magistrate Judge erred in concluding that Defendant Crompton “did not interfere with the MRI” but took reasonable measures to abate Plaintiff’s medical condition (*id.* at PageID.792-795). Plaintiff’s argument does not reveal any error in the Magistrate Judge’s analysis. As the Magistrate Judge pointed out,

[d]ifferences in judgment between an inmate and prison medical personnel regarding the appropriate medical diagnoses or treatment are not enough to state a deliberate indifference claim. *Sanderfer v. Nichols*, 62 F.3d 151, 154-155 (6th Cir. 1995); *Ward v. Smith*, No. 955-6666, 1996 WL 627724, at *1 (6th Cir. Oct. 29, 1996). This is even if the misdiagnosis results in an inadequate course of treatment and considerable suffering. *Gabehart v. Chapleau*, No. 96-5050, 1997 WL 160322 at *2 (6th Cir. Apr. 4, 1997).

(R&R, ECF No. 73 at PageID.771). This objection is therefore denied.

Last, Plaintiff disagrees with the Magistrate Judge’s conclusion “that the case against [Defendant Lamb] should be dismissed” (Obj., ECF No. 76 at PageID.797-798). However, Plaintiff fails to demonstrate any error in the Magistrate Judge’s reasoning, which is that “the basis for Plaintiff’s case against RN Lamb—her involvement in the grievance process—is insufficient to show personal involvement in the alleged unconstitutional conduct” (R&R, ECF No. 73 at PageID.785). “[A]n objection that does nothing more than state a disagreement with the magistrate’s suggested resolution, or simply summarizes what has been presented before, is not an ‘objection’ as that term is used in the context of Federal Rule of Civil Procedure 72.” *Brown v.*

City of Grand Rapids, Michigan, No. 16-2433, 2017 WL 4712064, at *2 (6th Cir. June 16, 2017) (citation omitted).

For these reasons, and those reasons more fully stated by Defendants in their responses to Plaintiff's objections (ECF Nos. 80-81), Plaintiff's objections fail to demonstrate any factual or legal error in the Magistrate Judge's analyses or ultimate conclusions. The objections are therefore denied. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Further, a Judgment will be entered consistent with this Opinion and Order and the prior Orders (ECF Nos. 5 & 71) entered in this case. *See* FED. R. CIV. P. 58. The Court declines to certify, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 76) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 73) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Crompton's Motion for Summary Judgment (ECF No. 29) is GRANTED.

IT IS FURTHER ORDERED that Defendant Lamb is dismissed from this proceeding.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment and for Default (ECF No. 37) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Emergency Motion for Immediate Injunction (ECF No. 59) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Amend (ECF No. 66) is DENIED.

Dated: April 1, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge